

Amendment No. 1 to SB0891

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 891*

House Bill No. 1078

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-33-203 is amended by adding the following language as a new subsection (d):

(d) Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201 where the person in possession is not being arrested, the seizing officer shall provide the person found in possession of the property, if known, a notice entitled "Notice of Forfeiture Warrant Hearing". This notice shall contain the following:

(1) the date, time, and court in which the seizing officer will be seeking a forfeiture warrant against the property pursuant to § 40-33-204;

(2) a statement that the person in possession is entitled to appear in court at the stated date and time to contest the issuance of a forfeiture warrant against the seized property and that this hearing shall be civil in nature pursuant to §40-33-204(b); and,

(3) a statement that if the person in possession does not appear in court, a forfeiture warrant may be issued and the property subject to the forfeiture process set forth in Title 40, Chapter 33, Part 2 and as stated in the Notice of Seizure.

SECTION 2. Tennessee Code Annotated, Section 40-33-204(b) is amended by deleting the section in its entirety and substituting the following language:

(b)

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(1) Any affidavit in support of a forfeiture warrant shall be sworn to and state the following:

(A) The legal and factual basis making the property subject to forfeiture;

(B) If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of titles, registrations or other recorded documents, the affidavit shall state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal, and factual basis for forfeiture of the interest; and

(C) If the interest of a secured party with a duly perfected security interest as reflected in the public records of titles, registrations or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of the interest.

(2) If an arrest was made at the time of the seizure, the officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and based upon the application, the affidavit, and any testimony as may be required in this section.

(3) If no arrest was made at the time of the seizure, the officer making the seizure shall present to the court, at the date and time specified on the notice of forfeiture warrant hearing, the application for a forfeiture warrant, the affidavit in support, the notice of seizure, and the notice of forfeiture warrant hearing. At the hearing on the forfeiture warrant application, the court shall:

(A) Review the application for a forfeiture warrant and the affidavit in support and take testimony from the seizing officer regarding the probable cause to issue a forfeiture warrant, including any testimony as may be required in this section; and,

(B) Review any evidence presented by and take testimony from the person in possession at the time of the seizure regarding why no probable cause exists to issue a forfeiture warrant.

(C) If the person in possession at the time of the seizure does not appear at the hearing and has received notice of the hearing, then the court shall review the application for a forfeiture warrant ex parte as under subsection (b)(2).

(D) The taking of testimony shall consist solely of the judge putting the seizing officer and person in possession under oath and asking questions to determine if probable cause exists for a forfeiture warrant to be issued under this section. Any examination by the judge of the seizing officer shall in no form or manner extend to whether the seizure is part of an ongoing investigation, nor shall the judge's examination extend in any form or manner to the source of any confidential information used in making a stop leading to seizure of the property.

(4) All hearings on applications for forfeiture warrants under this section shall be recorded. It is the duty of the court to maintain the recording. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence.

SECTION 3. Tennessee Code Annotated § 40-33-204(c)(2) is amended by inserting the language "In a proceeding under subsection (b)(2)," at the beginning of the first paragraph so that, as amended, the subsection shall read:

(c)(2) In a proceeding under subsection (b)(2), if the seizing officer asserts to the judge that the officer was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to ten (10) additional days to seek a forfeiture warrant if the judge finds that the seizing officer has:

SECTION 4. This act shall take effect January 1, 2014, the public welfare requiring it.